

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION

CRIMINAL NO. 1:04CR64

UNITED STATES OF AMERICA

vs.

KEVIN CHRISTOPHER MAKERSON

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ORDER

**THIS MATTER** is before the Court on the Defendant's second motion for reconsideration of the Court's prior Orders denying an extension of time in which to file an appeal. **See Orders, filed November 17, 2008 and December 9, 2008.**

In this second motion for reconsideration, the Defendant provides a case from the Western District of Kentucky which involved a defendant who had filed a late notice of appeal and requested the Court to permit the late filing due to excusable neglect. **See Order in *United States v. Rushin*, attached to Defendant's Motion, at 2 (citing *United States v. Thompson*, 82 F.3d 700, 702 (6<sup>th</sup> Cir. 1996)).** In *Rushin*, however, the defendant had filed his notice of appeal after the normal ten-day period for

notices of appeal, but within the allowable 30-day extension period. **See *id.* at 1** (explaining that under Federal Rule of Appellate Procedure 4, if the Court finds excusable neglect, a defendant may have up to 40 days after entry of judgment in which to file his notice of appeal).

In the instant case, however, as the Court has previously explained, Defendant filed his notice of appeal 16 days after the 40-day period expired. **See Order, filed November 17, 2008, at 2-3.** As the Court noted, the Court lacks jurisdiction to extend the appeal period beyond the confines of Federal Rule of Appellate Procedure 4. ***Id.* at 3 (citing *United States v. Alvarez*, 249 F. App'x 303, 304 (4<sup>th</sup> Cir. 2007)).**

**IT IS, THEREFORE, ORDERED** that Defendant's second motion for reconsideration is hereby **DENIED**.

Signed: January 13, 2009



Lacy H. Thornburg  
United States District Judge

